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INTRODUCTION

In accordance with the City Auditor's 1996-97 Audit Workplan, we audited the City of San Jose's business tax collection process as part of our ongoing audit of Sales and Business Tax collections. We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Scope and Methodology section of this report.

BACKGROUND

The San Jose Municipal Code, Chapter 4.76, "Business Taxes," was enacted solely to raise revenue for municipal purposes and not to regulate business. The tax rates as prescribed in Chapter 4.76 of the San Jose Municipal Code (Code) have been in effect since January 1, 1984. The business tax is calculated based on (1) for businesses, the number of employees, (2) for residential landlords, the number of rental units, (3) for mobile home park owners, the number of rental lots, (4) for commercial landlords, the number of square footage owned, or (5) for water companies, the number of connections. The basic business tax is \$150.¹ Most businesses pay an additional tax of \$18 for each employee over eight while residential landlords pay an additional \$5 for each rental unit over 30, mobile home park owners pay an additional \$5 for each lot over 30, and commercial landlords pay an additional \$.01 for each square foot over 15,000.

Three-Year Business Tax Revenue

The City of San Jose's (City) business taxes, penalties, and interest for 1993-94 through 1995-96 are shown in Table I.

¹ As of November 1, 1996, the basic business tax is \$154.50. Most businesses pay an additional \$18.54 for each employee over eight while residential landlords pay \$5.15 for each rental unit over 30, mobilehome park owners pay an additional \$5.15 for each lot over 30, and commercial landlords pay \$.0103 for each square foot over 15,000.

TABLE I
SAN JOSE BUSINESS TAXES, PENALTIES, AND INTEREST
FOR 1993-94 THROUGH 1995-96

Fiscal Year	Business Taxes	Penalties	Total
1993-94	\$9,379,840	\$501,408	\$9,881,248
1994-95	\$9,122,436	\$475,889	\$9,598,325
1995-96	\$9,431,229	\$628,054	\$10,059,283

**Improvements In Coordination With The Finance Department Staff
And The City Auditor's Staff In Pursuit Of Business Taxes**

The Finance Department/Treasury Division has partnered with a vendor to beta test a business tax lead identification system. This system known as the BIMS (Business Inventory Management Service) indicates businesses within the City that have not paid a business tax. The Finance Department/Treasury Division and the City Auditor's Office (Auditor's Office) have met regarding coordinating activities and communicating information so as to not duplicate efforts in identifying untaxed businesses. As a result of these meetings:

- both departments will coordinate their field audits within the City to avoid duplication;
- both departments agreed to work together and improve communications to identify the key elements and results that need to be tracked and communicated to each other; and
- beginning in June 1996, the Auditor's Office checks the BIMS system on a weekly or bi-weekly basis to see if potential business tax leads are already in the BIMS. In order to do this, an auditor must hand carry one or two weeks of accumulated potential untaxed business leads over to Finance for checking against the BIMS. If the auditor finds that certain leads are already in the BIMS, the Auditor's Office does not forward those leads to Finance for follow-up. This eliminates any duplication among the two departments.

SCOPE AND METHODOLOGY

This is the second report on the audit of business taxes. The first report focused on real estate brokers and agents, cosmetologists, insurance brokers, and sales tax permit holders as not having paid a City of San Jose (City) business tax. This report focuses on ways to reduce the number of businesses that are either not paying or underpaying their City business tax. We identified these businesses by comparing the City's business tax database to lists of potential licensees obtained from:

- the San Jose telephone directory;
- fictitious name listings from the County;
- other directories;
- the contractor database in the City Clerk's office;
- the Department of Information Technology (IT) printout--SIC property owner list;
- Santa Clara County Business Directory
- known out-of-town consultants who conduct business with the City.

In addition, we contacted the personnel departments or knowledgeable representatives of businesses and confirmed the average number of full- and part-time employees of the business. We report to the Finance Department the businesses that we identify in which the number of full-time equivalent employees differs from the number recorded in the City's business tax database. We also estimate penalties, interest, and back taxes.

During our review, we referred to the City's business tax database, which the IT established in 1984. The Finance Department/Treasury Division's Licenses and Permits (Treasury) section maintains the database and uses it to prepare business tax billings and renewals. Treasury also uses the database to prepare general information on (1) business profiles, (2) business tax payments,

(3) delinquent accounts, and (4) closed accounts. We used this database when we conducted field audits of those businesses that we could not reach by phone.

FINDING I

SAN JOSE'S BUSINESS TAX PROGRAM IMPROVEMENTS WILL INCREASE CITY REVENUES

With the exception of specific San Jose Municipal Code exemptions, all persons or businesses conducting business in the City are required to pay an annual business tax. Any person or business that fails to pay its business tax in a timely manner is subject to penalties and interest. According to City Auditor quarterly reports, as of September 30, 1996, the City Auditor's Office had identified 2,309 San Jose businesses that had not paid or underpaid an estimated \$1,315,903 in business taxes. During the course of our ongoing business tax audits, we noted several systemic problems with the City's Business Tax Program that caused the City to not receive its rightful share of revenues. Specifically, we identified the following:

- the City may be able to collect \$440,978 on a one-time basis and \$187,932 annually from businesses that underreported the number of employees on their Business Tax Renewal Forms and
- the City did not receive \$11,829 in business taxes from some tenants of four skyrise buildings and two shopping malls within the city limits of San Jose.

In our opinion, the Administration should add to its workplan to implement the amnesty program the City Auditor recommended in June 1994, an amnesty program for those businesses that have underreported the number of employees on their Business Tax Renewal Form. In addition, Finance should (1) amend its Business Tax Renewal Form and (2) work with San Jose rental property managers to inform tenants of their business tax responsibilities. By so doing, the City will increase its business taxes.

San Jose Business Tax

With the exception of specific San Jose Municipal Code exemptions, all persons or businesses conducting business in the City are required to pay an annual business tax. Those businesses and individuals that are exempt from paying City business taxes include:

- bank and insurance companies,
- marketers at public markets,
- certain organizations or associations (religious, fraternal, student cooperative, educational, military, state, county or municipal) conducting business not open to the public or for private gain,
- any organization or association conducting or staging an event which benefits the City,
- any person conducting or staging an event for charitable purposes,
- any charitable institution, organization or association,
- employees,
- farmers, poultrymen and horticulturists,
- certain peddlers, solicitors or other persons engaged in interstate or international commerce,
- persons doing business in San Jose less than five days a year,
- minors sixteen (16) years of age and younger,
- person peddling goods or wares produced solely by him or her,
- artists and craftspersons who sell their own designed hand-produced goods and wares,
- every natural person sixty-five (65) years or over whose annual gross receipts from any and all business is \$6,600 or less,
- teachers of music, art or educational subjects under certain circumstances,
- transient marketers,

- business conducted at certain City facilities,
- vendors participating in annual or special events conducted by nonprofit or charitable organizations, and
- persons operating a day care center for 12 or fewer children under the age of eighteen (18).

The basic annual business tax rate is \$150. Businesses other than residential and commercial landlords and mobile home park owners pay an additional \$18 tax for each employee in excess of eight employees up to a maximum of \$25,000. Residential and commercial landlords and mobile home park owners pay incremental taxes based on the number of Municipal Code-specified units. Water companies pay on the basis of the number of active metered connections. Table II shows the City's business tax rates.

TABLE II
CITY OF SAN JOSE
BUSINESS TAX RATES

	Basic	Increment	Maximum Rate
General Business Tax (Most businesses)	\$150	\$18 per employee over 8	\$25,000
Residential Landlords	\$150	\$5 per rental unit over 30	\$5,000
Commercial Landlords	\$150	\$0.01 per s.f. over 15,000 s.f.	\$5,000
Mobile Home Park Owners	\$150	\$5 per lot over 30	\$5,000
Water Companies	\$200	Various number of connections	\$20,000

Back Taxes, Penalties, And Interest

Any person who fails to pay the tax on or before the due date is liable for a penalty of 25 percent of one year's tax due. Should the tax remain unpaid for a period exceeding one month beyond the due date, an additional 25 percent penalty of one year's tax plus interest of 1.5 percent per month is assessed. If a person fails to obtain a valid certificate, the business tax due may be up to three years of back taxes together with applicable penalties and interest, as well as the current year's tax.

Municipal Code, section 4.76.290, states,

- A. Any person who fails or refuses to pay any business tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:*
- 1. A penalty equal to twenty-five percent of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate established by resolution of the city council; and*
 - 2. An additional penalty equal to twenty-five percent of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and penalties calculated at the rate established by resolution of the city council.*
- D. If any person has failed to apply for and secure a valid certificate, the business tax due shall be that amount due and payable from the first date on which the person was engaged in business in the city² together with applicable penalties and interest . . .*

² Subject to a three-year statute of limitations.

City Auditor's Business Tax Auditing Activities

The City Auditor's Office began auditing for local San Jose businesses operating without paying a business tax in July 1994. The City Auditor's Office identifies a business without a business license and forwards a Business Tax Lead sheet to Finance for follow-up. We also send the business a packet of information about the business tax along with an application. We consider our business tax findings confirmed if the business is listed as having paid a business tax in the City's Business Tax Database. As of September 30, 1996, the City Auditor's Office has identified 2,309 businesses that have not paid or under-paid a total of \$1,315,903 in business taxes.

The City May Be Able To Collect \$440,978 On A One-Time Basis And \$187,932 Annually From Businesses That Underreported The Number Of Employees On Their Business Tax Renewal Forms

Our review of the businesses who underreported their number of employees revealed that businesses frequently do not report their current number of full- and part-time employees on their business tax renewal notices. We identified these businesses by contacting the personnel departments or knowledgeable representatives of the businesses and confirming the average number of full- and part-time employees. We reported to the Finance Department the businesses that we identified in which the number of full-time equivalent employees differed from the number recorded in the City's business tax database. We then estimated penalties, interest, and back taxes. Table III summarizes the businesses we identified that underreported the number of their employees and the resultant annual taxes, and three years' taxes plus penalties and interest due from April 18, 1996 to August 31, 1996.

TABLE III

**NUMBER OF BUSINESSES IDENTIFIED AS UNDERREPORTING
THE NUMBER OF THEIR FULL- AND/OR PART-TIME EMPLOYEES
ESTIMATED ADDITIONAL ANNUAL BUSINESS TAXES,
AND THREE YEARS' BACK TAXES, PENALTIES, AND INTEREST
FROM APRIL 18, 1996 TO AUGUST 31, 1996**

Number Of Businesses Identified As Underreporting Number Of Full- And/Or Part-Time Employees	Estimated Three Years' Back Taxes	Estimated Penalties And Interest	Total Back Taxes³, Penalties, And Interest	Annual Estimated Additional Business Tax Revenues
224	\$235,866	\$205,112	\$440,978	\$187,932

As shown above, we estimated potential one-time collections of \$440,978 and additional annual revenues of \$187,932 from those businesses we identified as having underreported the number of their full-time and/or part-time employees.

We forwarded to Treasury for follow-up those businesses who did not pay or underpaid their San Jose business tax. As of August 31, 1996, the City's Business Tax Database showed that of the \$440,978 in estimated back taxes, penalties, and interest shown above, only \$32,845 was paid.

Tax Amnesty Program For Untaxed Businesses

By implementing a limited-period amnesty program, the City may be able to cost-effectively recover a substantial portion of the \$440,978 shown in Table II and increase its annual business tax base. In 1987, the City conducted an amnesty program for business taxes in which the City netted more than \$835,000 out of an

³ For purposes of calculating the three years' back taxes, we included the current year's taxes, which is the City's customary practice.

expected \$1 million. During the two-month amnesty period (October and November 1987), the City suspended late payment penalties and interest. The businesses that applied for the amnesty still had to pay the back taxes owed. Excluding the lost revenue due to waiver of penalties and interest, the amnesty program cost the City approximately \$69,000 to implement. Appendix B describes the 1987 San Jose Business Tax Amnesty program.

In June 1994, the City Auditor recommended in *An Audit Of The San Jose Business License Taxes* that the Finance Department/Treasury Division:

Implement a limited-period amnesty program to encourage unlicensed businesses to voluntarily pay their business license taxes.

As of October 1, 1996, implementation of this recommendation is being deferred, pending study by a task force the Mayor called for in 1995-96. The task force has submitted various recommendations and the Administration is in the process of developing workplans to implement the recommendation.

In our opinion, the Administration should add to its workplan to implement the amnesty program the City Auditor recommended in June 1994, a limited-period amnesty program for those businesses that have underreported the number of employees.

We recommend that the Administration add to its workplan to implement the amnesty program the City Auditor recommended in June 1994, a limited-period amnesty program for those businesses that have underreported the number of employees.

Annually, the Finance Department sends out business tax renewal forms to businesses who are registered as having paid a San Jose business tax. Finance sends to these businesses a Business Tax Renewal Form which already has the number of employees preprinted on it. The number of employees is critical because it is the basis for calculating the Business Tax. The Renewal Notice contains instructions for verifying and correcting all information on the bottom of the return portion of the form, including the number of employees and the calculated tax owed. However, we determined that businesses are frequently not taking the initiative to correct the number of employees information and calculated Business Tax that Finance provides on the form.

To remedy this situation, the Treasury Division should discontinue the practice of preprinting the number of employees on the Business Tax Renewal Notice. By so doing, businesses will have the responsibility of annually providing current information on the number of its employees in the available space on the form. This will also allow Finance to check the businesses' calculation of tax owed and notify the businesses by mail of any tax adjustments. This will not only provide Finance with current information regarding the number of business employees but also help ensure that the City is receiving the correct amount of Business Taxes.

We recommend that the Finance Department/Treasury Division leave blank the number of employees portion of the Business Tax Renewal Notice.

The City Did Not Receive \$11,829 In Business Taxes From Some Tenants Of Four Skyrise Buildings And Two Shopping Malls Within The City Limits Of San Jose

The Auditor's Office conducted a field search of four skyrise buildings and two shopping malls within the city limits of San Jose. We determined through this search that many businesses have not paid a business tax and that some fairly new businesses were not aware of the City's business tax requirements. Further, we found that some rental property managers do not give their tenants information regarding their business tax responsibilities. Table IV shows that 19 percent of the businesses that we visited during our field searches have not paid a San Jose Business Tax and that the unpaid Business Taxes for these businesses was \$11,829.

TABLE IV

SURVEYED BUSINESSES THAT WERE UNAWARE OF THEIR SAN JOSE BUSINESS TAX REQUIREMENTS

Location	Percentage Of Businesses Not Having Paid A San Jose Tax	Estimated Unpaid Business Taxes
50 Airport Parkway	49% (39 of 80)	\$6,735
55 South Market Street	23% (9 of 40)	\$1,411
60 South Market Street	12% (3 of 26)	\$450
95 South Market Street	13% (8 of 60)	\$1,050
Oakridge Mall	7% (4 of 59)	\$1,366
Valley Fair/2855 Stevens Creek Blvd.	4% (3 of 78)	\$817
Total	19% (66 of 343)	\$11,829

Finance should help and encourage San Jose property managers of business rental properties to notify their tenants, especially new tenants, of their business tax responsibilities. This will not only increase City revenues but will also result in Finance assessing interest and penalties to only those businesses that intentionally or negligently fail to pay their business tax. The Auditor's Office contacted six property managers of skyscraper buildings in downtown San Jose. All six of these managers were enthusiastic about helping the City distribute information packets to their tenants.

We recommend that the Finance Department/Treasury Division provide packets of information regarding the San Jose Business Tax and Business Improvement District to San Jose rental property managers for large business complexes for distribution to their business tenants. Finally, upon approval of Recommendations #1, #2 and #3, we recommend Finance Department/ Treasury Division request funding for any associated costs for necessary new staff and additional operating expenses.

CONCLUSION

Our review of business taxes revealed that certain businesses and persons who conduct business within the City limits, unless specifically exempt by the San Jose Municipal Code, are underpaying or not paying a San Jose Business Tax. We identified these businesses and persons by comparing lists of accounts from the City's business database to the Santa Clara County Business Directory, Business White Pages, the Business to Business Journal, and various field searches.

Our review revealed that many businesses are not updating the number of their full-time employees when they renew their San Jose Business Tax. In

addition, Treasury does not provide property managers of business complexes with information regarding San Jose Business Tax requirements. In our opinion, the Administration should add to its workplan to implement the amnesty program the City Auditor recommended in 1994, a limited-period amnesty program for those business that have underreported the number of their employees. Furthermore, by not preprinting the number of employees on the Business Tax Renewal Form, businesses will be responsible for reporting the correct number of employees in the provided space. Lastly, Treasury should provide the property managers of large business complexes with Business Tax packets and applications for distribution to their tenants. By so doing, the City will increase its revenues.

RECOMMENDATIONS

We recommend that the Administration:

Recommendation #1:

Add to its workplan to implement the amnesty program the City Auditor recommended in June 1994, a limited-period amnesty program for those businesses that have underreported the number of employees. (Priority 1)

We also recommend that the Finance Department/Treasury Division:

Recommendation #2:

Leave blank the number of employees portion of the Business Tax Renewal Notice. (Priority 1)

Recommendation #3:

Provide packets of information regarding the San Jose Business Tax and Business Improvement District to San Jose rental property managers for large business complexes for distribution to their business tenants. (Priority 2)

Recommendation #4:

Upon approval of Recommendations #1, #2 and #3, request funding for any associated costs for necessary new staff and additional operating expenses. (Priority 3)

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